

1 John A. Yanchunis  
2 (admitted *pro hac vice*)  
3 jyanchunis@ForThePeople.com  
4 **MORGAN & MORGAN**  
5 **COMPLEX LITIGATION**  
6 **GROUP**  
7 John A. Yanchunis  
8 201 N. Franklin Street, 7th Floor  
9 Tampa, Florida 33602  
10 Telephone: 813/223-5505  
11 813/223-5402 (fax)

12  
13 *Attorneys for Plaintiffs and the*  
14 *Putative Class*

15 Ann Marie Mortimer (SBN 169077)  
16 amortimer@hunton.com  
17 Jason J. Kim (SBN 221476)  
18 kimj@hunton.com  
19 Kirk A. Hornbeck (SBN 241708)  
20 khornbeck@hunton.com  
21 **HUNTON & WILLIAMS LLP**  
22 550 South Hope Street, Suite 2000  
Los Angeles, California 90071-2627  
Telephone: (213) 532-2000  
Facsimile: (213) 532-2020

23 Samuel A. Danon  
24 (admitted *pro hac vice*)  
25 sdanon@hunton.com  
26 John J. Delionado  
27 (admitted *pro hac vice*)  
28 jdelionado@hunton.com  
**HUNTON & WILLIAMS LLP**  
1111 Brickell Ave., Ste. 2500  
Miami, FL 33143  
Telephone: (305) 810-2500  
Facsimile: (305) 810-2460

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30 *Attorneys for Defendant*  
31 *Yahoo! Inc.*

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35       **UNITED STATES DISTRICT COURT**  
36       **NORTHERN DISTRICT OF CALIFORNIA**  
37       **SAN JOSE DIVISION**

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40       IN RE: YAHOO! CUSTOMER DATA  
41       SECURITY BREACH LITIGATION

42       } Case No. 16-MD-02752-LHK  
43       } STIPULATED [PROPOSED]  
44       } ORDER UNDER FEDERAL  
45       } RULES OF EVIDENCE 502(d)  
46       } AND (e)

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1           **1. PURPOSE**

2           This Order under Federal Rules of Evidence 502(d) and (e) reflects the  
3 Parties' agreement to protect certain privileged and otherwise protected  
4 documents, data (including electronically stored information) and other  
5 information, including without limitation, metadata (collectively,  
6 "Document(s)") against claims of waiver.

7           **2. CLAWBACK NOTICE**

8           In the event that a producing party claims that it inadvertently produced  
9 Documents subject to a legally recognized claim of privilege or work-product  
10 protection, it shall provide written notice of the claim to the receiving party (a  
11 "Clawback Notice"), identifying the subject Documents.

12           **3. COVERED DOCUMENTS**

- 13           (a) For purposes of this Order, "Covered Documents"  
14           include:  
15               (i) Documents specified in a Clawback Notice that  
16               were produced fewer than thirty (30) days prior  
17               to receipt of the Clawback Notice by the  
18               receiving party; and  
19               (ii) Documents specified in the Clawback Notice  
20               up to 5% of the Documents in the production to  
21               which the Clawback Notice relates.  
22           (b) The producing party is not obligated to provide any  
23           explanation or evidence regarding the reasonableness  
24           of efforts taken to prevent the production of Covered  
25           Documents.  
26           (c) The production of any Covered Document shall not  
27           result in the waiver of any privilege or other  
28           protection (including, without limitation, the attorney-

1 client privilege, the work-product doctrine, the joint  
2 defense privilege, or other applicable privilege)  
3 associated with such Document as to the receiving  
4 party or any third parties, and shall not result in any  
5 waiver, including subject matter waiver, of any kind,  
6 in this or in any other state or federal proceeding.  
7 This Paragraph shall be interpreted to provide the  
8 maximum protection allowed by Federal Rule of  
9 Evidence 502(d) with regard to Covered Documents.

10 **4. NON-COVERED DOCUMENTS**

- 11 (a) With respect to Documents specified in a Clawback  
12 Notice that are not Covered Documents under this  
13 Order (“Non-Covered Documents”), Federal Rule of  
14 Evidence 502(b) shall apply.  
15 (b) With respect to Non-Covered Documents, a Clawback  
16 Notice must describe the steps taken to prevent  
17 production of the specified Documents, and the steps  
18 taken to rectify the production of the Documents, to  
19 enable the receiving party to make a reasoned  
20 decision as to whether it wishes to challenge the  
21 reasonableness and/or timeliness of such steps.

22 **5. PROCEDURES FOLLOWING CLAWBACK NOTICE**

- 23 (a) Upon receipt of a Clawback Notice (regardless of  
24 whether the receiving party agrees with the producing  
25 party’s claim of privilege) or upon determining that  
26 information it received is privileged or work-product-  
27 protected, the receiving party must make reasonable  
28 efforts to promptly return, sequester, and/or destroy

the Document(s), all copies thereof, and any notes that reproduce, copy, or otherwise disclose the substance of the information for which privilege is claimed, and notify the producing party when this is complete.

- (b) If a receiving party challenges a claim that a Document specified in a Clawback Notice is privileged or work-product-protected, the receiving party shall notify the producing party of its positions within 14 days of receiving the Clawback Notice asserting the claim. Within 14 days of the producing party receiving notification of the dispute, the parties shall meet and confer in an effort to resolve their disagreement. If the parties are unable to resolve their disagreement, the parties may submit the issue to the Court for a determination, and may submit the document(s) at issue for in camera review.
  - (c) If a receiving party challenges a Clawback Notice pertaining to a Non-Covered Document on the ground that the production of the Document was not inadvertent by the producing party, that the producing party did not take reasonable steps to prevent the production of the Document, or that the producing party did not take reasonable or timely steps to rectify the production of the Document, the receiving party shall notify the producing party of its positions within 14 days of receiving the Clawback Notice. Within 14 days of the producing party receiving notification of the dispute, the parties shall meet and confer in an

effort to resolve their disagreement. If the parties are unable to resolve their disagreement, the parties may submit the issue to the Court for a determination, and may submit the document(s) at issue for in camera review.

**6. DOCUMENTS NOT REVIEWED FOR PRIVILEGE  
FOR BURDEN MINIMIZATION OR EFFICIENCY  
("QUICK PEEK")**

In the event that a producing party notifies a receiving party that it desires to produce Documents without having reviewed the Documents for privilege or work-product protection (“Quick Peek Production”), the parties will negotiate separate parameters for such productions and their related privilege protections. The provisions of Paragraph 3 of this Order will not apply to Quick Peek Productions. However, this Order shall apply to Quick Peek Productions to the extent that any privilege or protection is not waived in any other federal or state proceeding by disclosure in a Quick Peek Production.

## **7. PROHIBITION ON USE OF PRIVILEGED INFORMATION**

To the extent any party is aware that it has obtained, or it is reasonably apparent that the party has obtained, privileged or work-product-protected information through production, disclosure, or communications, such information may not be submitted to the Court (except in connection with a challenge of the privilege assertion) or presented for admission into evidence or sought in discovery in this proceeding or in any other proceeding or action.

1 **IT IS SO STIPULATED**, through Counsel of Record.  
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3 DATED: March 27, 2017

**MORGAN & MORGAN**

4 By: /s/ John Yanchunis  
5 John Yanchunis  
6 Plaintiffs' Lead Counsel  
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8 DATED: March 27, 2017

**HUNTON & WILLIAMS LLP**

9 By: /s/ Ann Marie Mortimer  
10 Ann Marie Mortimer  
11 Attorneys for Defendant  
12 Yahoo! Inc.

**ATTESTATION**

13 I hereby attest that each of the other signatories concurs in the filing of this  
14 document.

15 DATED: March 27, 2017

**MORGAN & MORGAN**

16 By: /s/ John Yanchunis  
17 John Yanchunis  
18 Plaintiffs' Lead Counsel  
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20 **IT IS SO ORDERED** that the foregoing Agreement is approved.  
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22 DATED: \_\_\_\_\_

23 \_\_\_\_\_  
United States Magistrate Judge  
24 Nathaneal M. Cousins  
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